



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

postponement of which to the gratification of a general eagerness to hurry the benefits of the institution, all its temporary inconveniences may be plainly deduced. It implies, not emigration of more colonists, but education and care of those already gone over ; not the increase of the Colony as a prime policy, but its welfare first, and of course its increase after ; its reputation ; the already beginning series of new experiments, rising around it, (like the flourishing Pennsylvanian and Maryland settlements), each improved by the practice of the last, and by the genial light of the period in which it originates ; the gradual growth of a system of voluntary emigration ; the spread of a prosperous commerce ; the whole chapter of colonial influence on the African continent, and the slave-trade of the coast ; the promotion of science ; the propagation of Christianity ; in fine, as we said before, the indefinite amplification of the entire scheme, with all its immense and endless issues.

ART II. — *Modern Law of Nations.*

1. *Ward's Law of Nations.* 8vo. 2 vols. 1795.
2. *Vattel's Law of Nations, by Chitty.* 8vo. 1829.

PROMINENT among the peculiar traits of the European civilization, are the intimacy of connexion and constancy of intercourse prevailing in all the diverse nations of Christendom. This appears in the mutual interchange of their natural and manufactured productions ; in the passage of science, arts, opinions, fashions, from one country to another ; in the social communication continually taking place among them ; in their possessing a common religion, a common taste, an historical reminiscence in common, and substantially a common intellectual advancement and condition. Their association as nations is, to be sure, continually subject to interruption by war ; but, even in the prosecution of war, in pursuing the business of reciprocal destruction, they observe certain usages and rules of warfare, which still mark them as the one great organized Christian Commonwealth of Europe and America.

To understand precisely the actual state of things in this respect, we have only to conceive any country, the United States for example,—or, which will make it still clearer, one of the

States, as Massachusetts, — to possess identically the same laws which it now does, except that no public functionaries exist, having authority to enforce those laws ; no executive or judicial magistrates, no regularly recurring legislative assembly. There is an admitted law of the land, which the good obey, and the bad violate, as at present ; its leading doctrines are well settled ; but there is no superior power, by which they may be enforced upon delinquents ; and if an individual who has entered into a contract with another, refuses to fulfil it, or if an individual assails another in any of his rights of person or property, the only means of redress, which the latter has, are to endeavor by arguments to convince him of his wrong, and then obtain reparation of the injury, or to induce him to agree upon some special tribunal to adjust the difference ; and if the party aggrieved fails in this endeavor, nothing remains for him but to muster his domestics and friends, and compel the other to do right if he may by high-handed force. Perhaps, in the case supposed, the neighbors of the parties, perceiving one of them to be manifestly in the wrong, will volunteer their aid in punishing the wrong doer. Perhaps, without undertaking to judge between the two, they may interpose from sentiments of benevolence to prevent the effusion of blood, or from selfish motives, on account of the great inconvenience to the whole society, occasioned by the warfare of any of its members ; and in either case, they may first offer their mediation, and if that is rejected, they may compel a cessation of hostilities, by the overwhelming superiority of their combined strength. The case put is not a mere imaginary picture of things. It is true, in a qualified degree, of all barbarous communities, where the right of private war is more or less prevalent. — Such, at one period, was the social condition of every country in modern Europe ; and such are the international relations of Christendom in our own time.

Take any familiar event in the public history of the United States, for instance, and it will be seen, that we have truly represented the relative condition of the civilized nations of Europe and America. War is raging between two European powers, France and Great Britain. A French cruiser encounters an American merchant-ship, unarmed, peacefully pursuing her course on the high seas ; arrests her ; forcibly dispossesses her unresisting crew ; removes whatever of her cargo may be valuable and portable ; sets fire to her, and burns her

to the water's edge ; or, if it happen to be convenient to him, places a prize-master on board, and sends her to France for sentence and condemnation. What ensues ? Negotiation ; the use of argument on the part of the two nations, one affirming, the other denying, that a wrong has been committed and requires reparation. Well, the allegation of wrong implies a rule of right ; and each party, in fact, appeals to the *law of nations*, and cites the law-books where it is found recorded and explained, in addition to the special compacts which may happen to subsist between the parties, in justification of its own view of the case. They admit a common law, by which they are bound. But is either of them a vassal of the other, and amenable to its laws and tribunals of justice ? By no means. Each of them is a sovereign power ; that is, not subject to any common government, although recognising a common system of laws. France admits that, unless her conduct is justified by the law of nations, or by treaty, the United States are entitled to indemnity for the injury inflicted on the person and property of an American. It may be, that France is convinced of the illegality of her proceeding, and promptly makes reparation ; or it may be that, without spontaneously yielding so far, and yet feeling amicably disposed, she proposes to refer the difference to the arbitrement of some common friend as umpire. If, however, each of them is self-willed, or the question be such as no text or analogy in the law of nations reaches, and they be too firmly persuaded each of its own right to yield anything, then, as they have no common court or superior, before which one party may compel the appearance of the other, the matter remains, for a long series of years, a subject of mutual discussion ; and may, after all, terminate in war, the ultimate reason of kings, the only final arbiter between sovereign states.

But suppose that the depredation, concerning which we reason, instead of being committed by one of the civilized nations of Christendom, were the act of some people out of the pale of Christianity, for instance, one of the Barbary States. In the first place, the fact would have differed ; for the crew of the captured merchant-man would have been killed on the spot, or sold into slavery, and the captors would not have troubled themselves to obtain a legal adjudication upon the prize. Secondly, the course of proceeding would have differ-

ed ; for although we, the civilized and Christian party, should probably talk much of the law of nations, yet we should speedily discover that the parties did not know or acknowledge any common law of nations ; and the question would resolve itself immediately into one of superior strength, to be tried only by recourse to war.

In substance, therefore, the law of nations, which men speak of, is the law of the civilized nations of Christendom. We say, substantially ; for in our own time, the weakness of the various Mahometan, or other unchristianized communities of the Old World, or rather the increasing relative strength conferred on the European races by their superiority in all the arts of peace and war, has the effect of gradually extending the Christian law of nations far beyond the limits of Christianity. Still, the position is in the general true ; that it is only the law of Europe, and its colonies, and of the nations descended from European colonies, and associated by all the ties of blood and religion to the peculiar civilization of Europe.

Nor is the occasional violation, or even deliberate denial of this or that maxim of the law of nations ; nor its fluctuations, by reason of the new pretensions of belligerents in time of war, which impair its symmetry, and of the more frequent improvements introduced into it by the progress of civilization ; nor the old and yet unsettled controversy among jurists, as to the foundation and binding obligation of international law, as whether it derives force from immutable nature, or from convention and usage : — neither of these considerations affords any impeachment of international law, as the admitted common code of the class or set of nations to which we belong. For, if we consider well the municipal law of any country, we shall detect in each one of these particulars, a perfect analogy between the law of nations and the municipal law. They differ essentially, neither in foundation, which is mixed of reason and of positive institution ; nor in susceptibility of violation, and of change for the better or the worse ; but only in the consequence following upon infraction, that is, the mode of redress and enforcement ; there being in the one case a tribunal for adjudging between them, there being in the other case, none. And they correspond in form ; treaties in the one case answering to statutes in the other, and each having its decision and usages received as obligatory.

When we come to discuss the social relations of sovereign states as members of the great community of civilized Christendom, we necessarily encounter the same current of abstract question, as in discussing the social relations of individual men as members of a single community; namely, the question of conscience, native moral sentiment, divine command, or actual consent, or whatever else be the rule of duty, — a never ending dispute, which runs through the moral writers of Greece and Rome, as of modern Europe. Without embarking, however, upon this wide sea of moral speculation, we propose, in this article, to present a brief practical exposition of the origin and nature of those important principles of peace and war, which constitute the supreme law of Christendom. The works, placed at the head of this article, afford us abundant material for the purposes in question.

Our intellectual cultivation is founded upon the knowledge of the Greeks and Romans; and our taste in the fine arts is purely and exclusively Greek. But our laws of national intercourse differ essentially from those of both Greeks and Romans; and although we derive our political institutions through the invading barbarians, our immediate ancestors, men remarkable for their ferocity, yet our maxims of national law are eminently superior in justice and humanity to those of Greece and Rome.

Begin with the Greeks. They, it is well known, accounted all other people barbarous; and the name of foreigner among them, instead of being a title of hospitality, was synonymous with enemy. Isocrates refers to it as the opinion of his countrymen, that foreigners were their enemies by nature.* Conformably with which notion, Aristotle, in running over the arguments used in his time to justify the institution of slavery, cites the doctrine that foreigners had, and could have, no claim of right as Greeks.† And on the same principle, as we read in Justin, the Phocæans, so late as the age of Pisistratus, pursued piracy as a trade, it being accounted in those times an honorable occupation.‡ Between Greek and Greek, how-

* Orat. Panathen.

† Aristotel. Politic. Lib. I. c. 4, in Gillies, Vol. II. pp. 35, 36.

‡ Hist. Lib. XLIII. c. 3. Namque Phocæenses, exiguitate ac macie terræ coacti, studiosius mare quam terras exercuere, piscando, mercando, *plerumque etiam latrocinio maris, quod illis temporibus gloriæ habebatur, vitam tolerabant.*

ever, men of the same race, speaking the same tongue, and having a common religion, it might be supposed there would be more of reason in their national intercourse. Quite otherwise. The only doctrine of international right which they seem to have held was this: that men are bound to such duties as they specially contract to perform. Accordingly, the people of one city distinguished those of another, as being either *ενδπονδοι* or *εκδπονδοι*, in compact, or out of compact, as the case might be; and in the latter alternative, the people out of compact were considered and treated as out of law. Thus, in multiplied examples, all over the history of Greece, we read of prisoners being slaughtered in cold blood; unsuccessful generals executed; the absolute annihilation of cities; the murder of ambassadors, and wanton punishment of hostages; and all the worst acts of savage cruelty perpetrated, not by soldiers in the hot blood of battle, but upon the deliberation and vote of public assemblies.

In Rome, as in Greece, the same word, originally, signified a stranger and a foe. *Hostis enim apud majores nostros is dicebatur*, says Cicero, *quem nunc peregrinum dicimus*.* And the civil law, in explaining the *Jus Postliminii*, lets us into a remarkable trait of ancient manners. If, says the text, we have neither friendship, nor hospitality, nor a treaty made for the sake of friendship, with a people, these indeed are not enemies; but anything of ours which reaches them becomes theirs, and if a freeman of ours is taken by them he becomes their slave; and so it is with anything of theirs which falls into our hands.† By still greater reason, of course, did the persons as well as property of public enemies become lawful prize of war. Tacitus says, that there was more slaughter in civil wars than in any other, because the captives were not available as plunder.‡ What suffering and ignominy the Romans inflicted on prisoners of war, we know by numberless proofs and in signal examples. Livy presents them all at one view, in a speech ascribed to Vibius Virrius, of Capua.§ “The torments and contumelies which an enemy of Rome has to expect, I can, so long as I am free and my own master, escape by a death at once easy and honorable. For I will not see A. Claudius

* De Offic. Lib. I. c. 12.

† Digest, Lib. XLIX, Tit. 15, Lib. 3.

‡ Hist. Lib. II. c. 44.

§ 7 Liv. Hist. Lib. XXVI, c. 13.

and Q. Fulvius pluming themselves in the insolence of victory ; nor will I be dragged in chains through the city of Rome, the spectacle of a triumph, to be then cast into prison, or to be bound to a stake, and, my back lacerated with rods, bend my neck to a Roman axe ; nor will I see my country consigned to devastation and fire ; nor the matrons and virgins of Campania to violation." It is evident that Livy alludes to these things, as the ordinary incidents of captivity ; and individual cases of extreme cruelty occur from time to time in the history of the Republic. Thus, after the defeat of the Teutones by C. Marius, their wives sent a deputation to the Romans to make stipulations for their chastity and freedom ; and being refused, they voluntarily inflicted death on themselves and their children.* Hence, the fury with which the ancients sometimes defended their cities to the last extremity, and then destroyed themselves, rather than submit to the laws of war, as in the case of Numantia. And the famous anecdote of the conduct of Scipio with respect to the captive princess, illustrates the same point ; since it was deemed a marvellous instance of virtue in him to abstain from doing that, which, if any modern general were to do it, would render his name proscribed as a hissing and scorn in all Europe.

At the same time, the Romans had the elements of a law of peace and war, and far surpassed the Greeks in the equity and reasonableness of their military usages. They were remarkable, indeed, beyond other ancient nations, for the observance of their engagements, and for the frequent exhibition of traits of generosity and honor, in their magnificent career of universal domination. Thus, they introduced the practice of a regular declaration of war ; and instituted a body of heralds. They held, also, in express terms, that it was unlawful to fight without military enrolment or commission ; and that even in the art of war itself, there were maxims of equity proper to be observed. Wherefore, Fabricius refused to have Pyrrhus assassinated ; Camillus restored the children of the Falisci fraudulently delivered up to him by their tutor ; and Regulus returned to Carthage to suffer the certain doom of a cruel death, in redemption of his parole of honor. They enforced upon others the rules of war observed by themselves ; for they des-

* Florus, Lib. III. c. 3.

troyed Corinth, one of the noblest of the Greek cities, professedly because it had infringed the rights of ambassadors. And a similar cause, by the way, led to the destruction of Athens by the Persians. In short, Rome made approaches to a system of public law ; and, accordingly, we see that the texts of the Roman Institute and Pandects are, to this day, occasionally cited on controverted points of international intercourse ; but after all, the system itself is the growth of the later days of Christian Europe.

For the barbarians came in upon the empire, not only without any settled notions of international law, but thoroughly steeped in military usages, utterly atrocious, abominable, and abhorrent to all sense of reason or justice. It was a part of the very religion of the Scandinavians, such as they had, to familiarize themselves with bloodshed. They counted death by violence in their own persons, as the surest passport to their heaven of drunkenness and brutal fury ; and of course, humanity in war, regard for the rights of enemies, was unknown to their hearts or their lives. In truth, the tribes which overran the Roman Empire, were desperate savages, with whom to conquer was to destroy. They swept over the civilized world, like a tropical hurricane, levelling all things in the dust before their fierce career. The *Vandals* have given their name to wanton barbarism. In the midst of the splendid monuments of ancient art, the civilization, science, and religion of Rome, they were Scythians still, lapping themselves in blood like wild beasts, and filling the earth with desolation in blind, aimless rage of cold-blooded ferocity. They made it their boast, that "horses might run without stumbling, where houses and cities had once stood." In the single reign of Justinian, the waste of human life, occasioned by the barbarians, has been estimated at six millions of persons. Reflect on the mass of suffering implied in such a fact. It is notorious, indeed, that practices which common civilization has driven out of existence, at least in Europe, were then received as acts of mercy ; as to spare the vanquished inhabitants of the empire from massacre, and to reduce them to servitude in ransom of their lives, was the very height of humanity among the rugged Goths and Franks.

In this period of universal desolation and misery, what was it which gave the first check to the savage career of the barbarians, and opened upon the darkness of Europe the dawn of

better days ? Manifestly, the influence of the Christian Church, which, from the beginning, labored assiduously and successfully to convert, and, of course, to humanize the barbarians. When Alaric, in the midst of the sack and pillage of Rome, gives command to respect the churches of the Apostles ; when Luitprand leads off his troops from the same city at the entreaty of the Pope ; when the Saxons and Franks begin to emancipate slaves upon the bed of death as an acceptable offering to God ; and when the rude conventions between the different tribes of barbarians are coming to be drawn up in the name of Christ and the Holy Trinity : — then, we perceive plainly enough, that there is a blessed alterative medicine at work in the disordered frame of European society, slowly but surely counteracting the sanguinary tenets and usages of the ferocious children of the North.

Centuries, however, elapsed, filled with anarchy and bloodshed, ere a regular code of international law existed, or was even conceived ; that long period of transition, which ensued upon the death of Charlemagne, and preceded the re-organization of Christendom after the crusades. It will be curious and instructive to advert to some of the customs of national intercourse, the rude elements of a public law, which are observable in the events of this period, down to the time of the revival of intellectual cultivation and the arts, and the discovery of America.

Early in this period, we find that the Saxons, Franks, Goths and Lombards, who had appropriated the chief part of Europe, were already advanced so far in civilization, that, when the kindred race of the Normans began to descend upon the coast of Britain and France, the cruelty they practised was become abhorrent to the posterity of the first hordes of invading barbarians. This difference between the Normans on the one hand, and the Saxons and Franks on the other, continued long after the peaceable establishment of the former in France ; for Matilda of Scotland, a foreign and neutral princess, who happened to be in England at the time of the Norman Conquest, was obliged to assume the veil, like many other Saxon ladies, as the only means of protecting her chastity against the followers of William of Normandy. Bad as this was, it showed that the cloister at least had come to be respected ; and the

usages, which obtained elsewhere in Europe, were not such as to reflect much shame on the Normans by comparison.

For instance, the mutilation of captives was a common incident of war. So also was the use of poisoned weapons, and the poisoning of the wells of a country or town through which soldiers were to march. Prisoners being considered at the mercy of the captor, they were treated as a kind of hostages for extorting advantages from their friends and countrymen. Foreigners taken in battle were sometimes tried, condemned and executed as for treason in the breach of municipal law. It was no rare thing to execute officers, taken prisoners in the defence of a military post, to punish them for holding out longer than pleased the besieger. No farther back than the sixteenth century, it was a relic of old barbarism, still held as parcel of the law of nations, that strangers coming into a country without a safe conduct, were liable to arrest and detention. Throughout the middle ages, princes and generals were accustomed to take infinite precaution against the danger of personal violence when they met for conference or negotiation; as for instance, by having their interview on different sides of a strong barrier. Cases frequently occur of open disregard of the rights of ambassadors, nor were the heralds, indispensable to communication between hostile princes or states, uniformly safe. Hostages were subjected to every species of cruelty, such as imprisonment, mutilation, and massacre in cool blood. And, in the process of improvement, the practice of holding prisoners to ransom took the place of reducing them to slavery, and became a source of private emolument, just as regular and settled as the right of the landholder to the products of the earth.

Meanwhile, however, the different nations of Europe had respectively acquired their distinct public organization; alliances and other conventions were become frequent; princes appealed to the mediation of other princes, and addressed themselves to the common judgment of Christendom; occasional diplomatic relations between them gradually came into more constant use; and thus the elements of the modern law of nations began to develop themselves all over Europe. It is time, therefore, now to point out the great usages and institutions of the period under review, so far as they bear upon our subject, and to explain their operation and influences.

In the outset we have Christianity, preëminent in its general influence over the civilization of Europe, and distinctly useful in respect of the reciprocal relations of sovereignties. Of sovereignties, because, in those times, Europe was divided, not into nations exclusively, but into federative sovereignties, somewhat similar in principle to the organization of the United States, except that the sovereignties were composed for the most part of the feudal barons in behalf of themselves and their vassals, not of the vassals in the aggregate, considered as a state or political community.

Remember that the invading barbarians were pagans, emphatically so, and the professors of a superstition of drunkenness and blood; and that the first glimmering of civilization, discernible among them, dates from their conversion to Christianity. Remember, also, that the Christian religion, in contrast with most other forms of worshipping God, discountenances the shedding of blood either in sacrifice or war. That is, viewed in the light of a moral code, Christianity is a pacific system. Hence, upon the conversion of the barbarians to Christianity, that effect instantly followed, which it was natural to anticipate; a mitigation of the universality and ferocity of war, as previously waged all over Europe. Then began the custom of appealing to peace, as the means of sparing the effusion of the blood of fellow Christians. The Emperor Charlemagne cites the texts of scripture upon this point in his Capitularies, just as our Puritan forefathers did with reference to ordinary crimes, in the laws of the Colony of Massachusetts Bay. But the church did not content itself with good maxims, the inculcation of anti-belligerent doctrines merely in words. It cast about successfully for the means of innovating practically upon the existing usages of war. To this end, it began by establishing that *Pax Ecclesiæ*, Peace of the Church, which figures conspicuously in all the early laws of the barbarians, of whatever tribe or locality; that is, the prohibition of acts of violence in churches, monasteries, and other places consecrated to the worship or service of God. "We have all one Heavenly Father, and one Spiritual Mother, which is the Church," says the law of the Saxon Aethered, "and therefore we are all of us brethren; and the peace of the church is the great peace to be cultivated by a Christian." Having thus obtained an immunity from war in behalf of certain places, the church next betook itself to procuring it

for certain days, being the Lord's day, and other chief holidays traditionally observed by the Roman Church. To enforce the prohibition of warfare and other worldly acts on those days, it was ordained that those who transgressed it should be deprived of Christian privileges in life and after death. A remarkable incident rendered the efforts of the church in this particular conspicuous. It was pretended that a bishop in Aquitaine received a message from God, enjoining peace under the immediate penalty of divine vengeance; wherefore ensued the *Treuga Domini*, or Truce of the Lord, a complete cessation of hostilities for the space of seven years; and the church availed itself of the occasion to re-enjoin the perpetual immunity of the chief holidays, including three days of each week, from the evening of Thursday to the morning of Monday, so as to include the days of the Passion and the Resurrection of Jesus Christ.* And associations of barons bound themselves by treaty or deed to keep the conditions of the *Treuga Domini*. In obedience to a similar pretended revelation, the prelates and barons of the south of France assembled and made a league, called the Brotherhood of God, for the purpose not only of observing, but of enforcing, peace.

This example illustrates the humanizing influence of the tenets of Christianity upon the international relations of Europe. Its influence as a visible institution was yet more important, as displayed in two ways, namely, in the authority exercised by the Pope prior to the time of the Reformation, and in that of the Œcumenical Councils.

Though, in the early ages of Christianity, it is undeniable that the bishops of Rome were but as other bishops, and invested only with diocesan authority similar to theirs, yet the political position of Rome, as the capital of the Christian world, tended to impart superior dignity and importance to its bishops. Accordingly, the Council of Chalcedon ascribed to Pope Leo the title of Œcumenical, that is, universal, bishop; and the general superintendence of the church, thus conferred on the Roman See in the time of the Roman emperors, was confirmed by Charlemagne, after the conversion of the barbarians, — extended by the forged code of Decretals, falsely ascribed to Saint Isidore, — and established by Hilde-

* Robertson's Charles V. Int.

brand. In the plenitude of its power, the Papal See claimed to hold the keys of heaven as the successor of Saint Peter ; and thus, not only to exercise a general superintendence over all ecclesiastical persons, but also to excommunicate, and thus to depose lay sovereigns, by declaring them unfit to reign, and so to give and take away kingdoms. Unwarranted by scripture or positive institution as this stupendous usurpation of the Pope may have been, its existence is not the less certain. All the inhabitants of Latin Europe concurred in recognising him as the religious head of the church. But the limits between political duty, and moral and religious duty, are not easy to define at any time. Least of all were they clearly marked out in those times, when the clergy alone possessed whatever intelligence there was in the world. Thus it came about that Western Europe was resolved into a grand community of nations, having an elective chief, who was their infallible censor in all points of morality and faith, the mediator between earth and heaven, the great casuist for the solution of all difficulties, the judge for the redress of all the wrongs of all mankind, and the political as well as moral and religious director of the affairs of Christendom. If it were compatible with the imperfection of human nature that this extraordinary power, based upon the religious respect and confidence of the world, could have been administered in the spirit of its origin, with unqualified purity and wisdom, it would have united all the nations of Christendom in a holy brotherhood of peace, and exemplified on earth the celestial government of the Deity. Its abuse, in the ordinary course of human affairs, by the meddlesome and all-grasping ambition of the Roman See, occasioned its overthrow ; but not before it had done much to combine and cement together the sovereignties of Europe in a great Christian republic.

Innumerable instances of the beneficial exercise of this parental superintendence of Christendom by the church, occur in the history of all the chief nations of Europe. It began before the dissolution of the empire. Theodosius, having slaughtered seven thousand men at Thessalonica, without discrimination of the guilty from the innocent, approached the church at Milan to pay his accustomed devotion, unconscious, or at least unthoughtful, of his crime. St. Ambrose boldly met him at the gate, and addressed to him a severe but affecting admonition on his injustice,

forbade him to enter, and sent him away, great as he was in the yet undivided control of the whole Roman empire, a penitent and humbled man. The same thing continued among the oldest of the Christianized barbarians. Thus, when Lotharius, the first king of Lotharingia, repudiated his wife to marry another with whom he had previously lived in criminal intercourse, the Pope interposed, and compelled him, after a long struggle, to return to his duty. And examples of it abound in the centuries preceding the Reformation. When Henry II. of England was tortured by the undutiful conduct of his turbulent sons, he poured out his agony into the bosom of the Pope, as the spiritual consoler and guide of Christendom. Nothing less than the authority of the Roman See would have procured the release of Richard Cœur-de-Lion from captivity. Repeatedly the church compelled great princes to give up individuals unjustly detained, as in the case of the three daughters of Tancred of Sicily thus wrested from the Emperor Henry VI., and of the infant son of the King of Aragon, held captive by Simon de Montfort. We mention these particular examples, rather than the more familiar ones, of the interposition of the church in political questions, for the reason, that this kind of parental supervision of sovereign states and princes by the See of Rome, is a most peculiar, and yet little notorious trait of the law of nations, as observed by Christian Europe in the middle ages.

The Œcumenical Councils were, as Voltaire justly remarks, a genuine European senate. These councils, in their inception, were ecclesiastical merely; but in process of time they were extended for common convenience, so as to embrace the temporal concerns of Europe. Instances occurred of the trial and deposition of princes on these occasions; and in the settlement of all the great controverted questions of the day, the Œcumenical Councils assumed a jurisdiction quite as broad as any of the European congresses of our own time, and were constituted in the same way, of princes in person, or represented by their ambassadors, except that they usually comprised a large number of ecclesiastical dignitaries, in addition to the temporal sovereigns, and settled the religious equally with the political affairs of the commonwealth of Christendom.

There is another doctrine, introduced into the law of nations by the Roman church, which we ought not to omit indicating

as an extraordinary instance of abuse of power ; and that is, the view of the relation between Christian and Infidel held in those times, and exemplified in the crusades and in the conquest of America. Without dwelling upon the fact of the crusades, look at the grant of the East and West Indies, made by Pope Alexander to Spain and Portugal. This concession proceeded on the idea, which obtained in Europe after the preaching of the crusades, that countries, inhabited by a pagan people, were lawfully open to invasion and subjugation by the first Christians, for the purpose of conversion. The same principle is recognised in the first patent of Henry VII. to the Cabots.*

Next to Christianity, in their influence upon the reciprocal relations of the states of Europe, deserve to be considered the Feudal System, and that singular offspring of it, the institution of chivalry. Allusion has already been made to the universal prevalence of bloodshed in the middle ages. This, it is notorious, grew out of the feudal right of private war, as it was called, exercised by men of noble or gentle blood, all over Europe, who held themselves sovereigns in everything except such duties of allegiance as they specially contracted to their respective feudal superiors, and retained the rights of peace and war amongst many other reserved attributes of sovereignty, in that spirit of personal independence which characterized the invading barbarians. Thus it happened that Europe was covered with castles, each the strong hold of an armed chieftain, who carried on military operations at will. To what excess this practice was carried, may be judged by the fact, that in England alone, at the conclusion of peace between Henry II. and Stephen, there were eleven hundred and fifteen baronial castles ordered to be destroyed in the process of public pacification. While Christianity did so much to check and eventually abolish this custom, the monstrous evils it occasioned were also counteracted, in some sort, by the association of Chivalry, which, amid the universal depravation of society, made it a point of honor to perform those acts of virtue and patriotism, which the law did not enjoin, or which, if it did enjoin, there was no political organization competent to enforce. And these two institutions, the Feudal System and

* See Hazard's Collection, Vol. I.

Chivalry, had the effect of increasing the natural dependence, or rather connexion, of the different nations of Europe, by means of the mutuality of relation, which they introduced among princes and barons of separate countries. Thus, the kings of England long did homage to the kings of France, for their possessions on the continent. And there was a never-ending series of intricate interlacements of feudal or chivalrous relations among the sovereigns of the continent, especially in Germany, where the feudal system prevails to this day more than in any other part of Europe.

But, after all, the great body of law-text, appertaining to the international relations of Christendom, is the result of treaties, conventions, deeds and charters, constituting the positive institute of the public law of Europe and America. These conventions were, of necessity, founded upon the institutions, opinions and ways of thinking and acting, which prevailed in European society; they were designed to give the solemnity of stipulation or promise to contemplated acts; and they introduced changes into the existing laws and usages of Christendom. Some of them were singular incidents of the personal rights of sovereignty, acquired by European princes in modern times; especially treaties of marriage, and instruments of devise, gift or sale, whereby the boundaries of states underwent alterations in form unknown to the ancient republics of Greece and Italy. Thus the See of Rome obtained the territory of Avignon by purchase from the Countess of Provence. Thus, also, we ourselves acquired Louisiana and Florida, the one from the Emperor Napoleon, and the other from Ferdinand of Spain. The United States, however, be it remarked by the way, being a government of social compact, not of prescription, made these purchases upon very questionable grounds of constitutional right; the presidents who negotiated the treaties of purchase, and the congresses which sanctioned them, feeling justified by the great utility of the thing and the acquiescence of the people, in thus doing what there is no authority for doing set down in the constitution. It is clear, on the other side, that the United States, although they be borne out in buying the territory and population of other countries, yet cannot sell their own; still less can they give them away; or alienate them by devise, which happens to states held in hereditary sovereignty by individuals under the prescriptive laws of Europe. Im-

portant in the highest degree, among the consequences of personal sovereignty, is the effect of marriage upon the nationality of a people. Thus England and Scotland were made one kingdom; thus Castile and Aragon were united to constitute Spain; thus the kingdoms of Bohemia and Hungary came to form but parts of the duchy of Austria; and thus the counts of Flanders became the kings of Spain, and the Indies.

To go into an explanation of the vast number of treaties of peace, alliance, or commerce, entered into between the European nations, would be neither more nor less than the writing of a legal treatise, when our sole object is the limited purpose of elucidating the question of international law, as affected by the progress of civilization in modern Christendom. What we have said will serve to account for the gradual melioration of the usages of the nations of Europe, in their military and international relations, down to the sixteenth century, the epoch of the colonization of America, and of the general revival of learning and the arts in Europe. That century is memorable for the happening of various things, which materially affected the intercourse of nations, and, in fact, moulded that intercourse into the body and spirit which it now exhibits.

In the first place, the Reformation put an end to the general superintending and appellate jurisdiction of the Roman pontiffs. This event, also, subdivided Christendom into two classes of states, Protestant and Catholic, which for a long time regarded each other as natural enemies for the cause of religion alone, just as of old the Christians had been accustomed to regard the Mahometans. Thus the Roman See proceeded against the Albigenses as infidels, the objects of a regular crusade, or war of the cross. On the other hand, Elizabeth of England aided the French Huguenots and the insurgent Netherlanders, as a point of duty to their common cause of Protestantism. These considerations, however, yielded very soon to

The second great political question of that age, which ever since, indeed, has been prominent in the affairs of Europe, namely, the preservation of the balance of power. This idea, like so many other of the great intellectual conceptions of modern times, had its origin among the Italians, who were prompted by their own domestic divisions, and the belligerent operations of the French and Imperialists, to organize great confederations of states to protect the weak against the self-ag-

grandizing schemes of the strong, and thus maintain the chief political divisions of Europe unchanged. This object, it would seem, is on the whole the predominant one in the negotiations and wars of Christendom from that day to this. It has powerfully contributed to fix the existing law of nations; being an application to the intercourse and relative condition of nations, of the same doctrine of counter-checking powers and balanced interests, which pervades the domestic policy of the constitutional states of Europe and America, and being equally instrumental in each case in substituting observance of law in place of perpetual recurrence to brute force.

Thirdly, the great extension of commerce at this period, created a necessity for more stable rules of public intercourse than obtained before; in connexion with which ought, indeed, to be considered the tendency of the art of printing to draw closer the intellectual associations of the inhabitants of different countries, to multiply their ties, and of course to humanize their general intercourse. Thereupon ensued

In the fourth place, that important improvement in the international relations of Christendom, of resident embassies, protected by the privilege of ambassadors from civil and criminal process in the country where they were accredited. This remarkable custom arose from the unity of the nations of Christendom as one great republic, composed of parts allied by treaties of marriage or policy, intimately associated in commerce, literature, arts, and religion, and possessed of a paramount public law. Extraordinary embassies, that is, messengers despatched for a special and temporary object, between people and people, are of course coëval with the very existence of society in all regions of the globe. Not so with ordinary resident embassies, as used by Christian states at the present day. They were unknown to the Greeks and Romans; and the lateness of their introduction into modern Europe is a well-authenticated historical fact. Sir Edward Coke tells us that Henry VII., "that wise and politic prince, would not in his time, suffer liege ambassadors (that is, resident ambassadors) of any foreign king or prince within his realm, nor he with them; but upon occasion used ambassadors.*" To be sure, the Pope had long been accustomed to have such ministers in other countries, by the name of *nuncios*; which natu-

* 4 Inst. 155.

rally happened, by reason of his general authority as the head of the church. But Ferdinand of Aragon is said to have been the first secular prince to imitate the example of Rome in this respect. At present, therefore, each of the Christian states maintains, in the court of its allies, or of countries with which it is not actually at war, a public agent, who, though he serves in the capacity of a sort of spy upon the actions of the sovereign near whom he resides, yet being recognised and understood as such, acts in full honor, and is indispensable to the business of the world as now transacted, for the protection of the subjects or interests of his own sovereign. This innovation was another great step in the advancing civilization of Christendom. The failure of the Turks, and of other nations out of the pale of the Christian religion, to imitate us in this matter, is among the decisive proofs of their persevering, if not inveterate, ignorance and barbarism.

Finally, the publication of the great work of Grotius, entitled "Of the Right of War and Peace," was in itself an event of infinite importance. There is nothing, which more eminently illustrates the intrinsic value of intellectual cultivation, and which is better calculated to stimulate a scholar in the pursuit of knowledge, than the capacity it gives him of nobly serving his race, in spite of the reverses of political or social fortune, to which all men are alike subject. They, who tread the slippery paths of popular favor, and who encounter all the hazards of party distinction and party hostility, have a consolation to carry along with them, in addition to the consciousness of upright intention, and the possession of a self-sustaining temper; things which are indispensable to happiness in all walks of life, but especially in the ever-present cares and responsibilities of public service. Though they be driven from the post of honor and power by the judgment of men, there is a resource of which only the judgment of God can deprive them, by depriving them of his own highest boon of cultivated reason. Whatever talents He shall graciously vouchsafe to them, they have the power, in any event, to employ for good, perchance for fame, in the record or investigation of truth for the instruction of their fellows. History is full of splendid examples in point. Dante, stripped of his rank and station in Florence, a homeless exile, a wanderer among the courts of Italy, wrote that Divine Comedy, the great classic poem of his nation. So, also, Milton, no long-

er the secretary and champion of the English Commonwealth, but proscribed, and merely suffered to live in his desolate poverty and blindness, composed the immortal *Paradise Lost*. Nay, cast from the heights of political greatness, for the mean and odious crime, or at least the imputation, of selling justice at the price of gold, a disgraced statesman, an impeached judge, did not Sir Francis Bacon construct the *New Organ of the Sciences*, which diverted into other and better channels the whole erring current of human thought, and thus gloriously atoned for a million such acts of weakness, rather than guilt, as were proved upon him to produce his downfall? The composition of the great work of Grotius in question, was a consequence of his own expulsion from power, and his exile into France. We profess that we have inspected the mouldering towers of the old castle of Louyestein, with an interest which few monuments of art would have awakened, associated as it is with the imprisonment of Grotius, and, above all, the heroic self-devotion of his noble-hearted wife, who gained admission to his prison with a chest supposed to contain books, wherein he escaped, while she remained behind herself to meet and to defy the resentment of his enemies. In his adopted country, Grotius composed that work, which, in the name of a treatise, founded upon historical precedents and conventions, was, in fact, a code of the European law of nations, and the great authoritative guide in the public intercourse of Christendom.

As modified in the period intervening between the ages of Grotius and our own, as practised at the present day, and especially as contended for in the United States, the law of peace and war, or the rule governing the intercourse of civilized nations, presents to us a number of interesting points for discussion, which, however, do not come within the scope of the present inquiry. We refer the curious reader, who seeks for information upon this subject, to the works of Puffendorf, Barbeyrac, and other authors of the school of Grotius; but more especially to the numerous collections and treatises of a later date, among which Vattel's book is by general consent received as the best manual for common reference.
